Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	MB Docket 19-3
Notice of Proposed Rulemaking	)	
FCC 19-9	)	

REPLY TO NOTICE OF PROPOSED RULEMAKING

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INTRODUCTION

Commenters are generally favorable toward FCC 19-9 Notice of Proposed Rulemaking ("Notice"), and support clarity and administrative efficiency especially regarding the multiple mutually-exclusive ("MX") applicant process. We commend the Commission for their care and consideration regarding the opportunities for abusing competitive MX processes, and while no set of rules is foolproof, we appreciate this opportunity to comment from our years of experience.

Localism and Points for NCE Applicants

We agree with the need to reduce administrative burden, and agree that a change is needed.

As grassroots radio advocates, we strongly support the Commission's statement that "Localism has historically been considered the lynchpin of excellent NCE service, and accordingly the Commission chose localism as the single most important factor in our NCE point system."[1] A priori determination that genuinely prioritizes localism, and aims to preserve local radio through time, has no easy answers and no doubt this discussion will continue beyond this proceeding.

Most NCE licenses in 2007 and 2010 went to large chains having more in common with commercial broadcasters than the values of localism that the NCE rules originally sought to

[1] Notice, para 25

protect. If past is prolog, this clearly underlined the need for stronger localism rules for LPFM.

To this end, we initially propose the NCE stations adopt the same localism points policy now used for LPFM applicants, and proceed to discuss them both in common.

Some LPFM stations are effectively content networks, reproducing streamed programming—compliant with current rules. Some operators are informally known to control multiple LPFM stations illegitimately.

Furthermore, some LPFM stations' new construction-permit applications were based on purpose-chartered new corporations; and while many of those were legitimate—some were not. Even though the LPFM policy allows problems to slip through, we still recommend it be adopted for all NCE stations.

While stronger corporate documentation initially seems prudent, it is also true that small community organizations are likely to be less equipped to meet these standards. It is ironic that speculators and network builders are more likely to employ attorneys, and thus are more likely to meet the corporate documentation requirements. For this reason we oppose the corporate documentation requirement.

An applicant organization ideally needs to be active, with real activities, within the proposed service area of the station, and to pledge that the station's programming will serve the local community. Ideally, the documentation of the organization's activities is an indication of how it will relate to its community. However, for new legitimate organizations, there may not yet be such documentation.

Even with the localism points, with localism being claimed to be most important factor, in reality it is often pushed aside by 307b first and second coverage. In regard to this, we propose that 307b first and second coverage should be applied *after* the local points, or to apply only when the local points criteria is met.

Eliminate Governing Document Requirements for Applicants Claiming Diversity Points

We agree with this change. The existing rule adds confusion and has many times been misinterpreted by applicants—sometimes fatally.

With the rampant misinterpretation, why not simplify the rule? We propose granting the "diversity points" when the organization has no other authorizations, or only has authorizations that are intended to be replaced by the instant application. An example of such replacement would be if the organization holds an LPFM license, and pledges to turn it in on grant of the instant full power license.

Establish Uniform Divestiture Pledge Policies

We agree with the changes as proposed.

Tie-Breaker Criteria

We propose that what is now considered as tie-breakers instead be explicit points.

Instead of using the number of authorizations as a tie-breaker, we recommend the FCC allocate one negative point for every existing authorization not being divested.

We agree that “first-come-first-served” is a bad idea.

We also disagree with favoring older organizations.

As unpopular as mandatory time-sharing is, it is probably the only fair way to handle such ties.

Allocating Time in NCE and LPFM Mandatory Time-Sharing Situations

We favor NCEs using a method similar to what is currently used for LPFM, but disagree with a limit of three and also with preferring the oldest organizations. We also disagree with the current point aggregation policies used for LPFM, because they promote aggression, rather than cooperation.

Clarify and Modify the “Holding Period”[2]

A four-year “holding period” is not sufficient to prevent speculation. As the band gets more crowded, and increasingly dominated by large organizations—the value of a truly local organization is increased. Perhaps ten years would be better, but it depends on the situation. We agree with paragraph 51, to eliminate the current absolute bar, and we believe that all factors should be combined into a points score, allowing point trade-offs such as reducing coverage while adding localism or diversity points.

Perhaps this should become part of NCE policy for all changes, all stations, and not specifically those so encumbered.

Curing LPFM Section 301 Violations

We believe that to totally prohibit changes to the board of directors and nunc pro tunc reinstatement is unduly harsh, especially if the primary intent is to thwart fraud. Other board members may not have known about the violation, and LPFM stations are less likely to employ attorneys and so make honest mistakes. A similar situation exists with a board member being on the board of more than one organization.

A compromise might be to limit changes to a small percentage of the board, perhaps 20%.

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[2] Notice para 32

This would allow an organization with 5 board members to cure the defect, but not a smaller board where the offender has a bigger stake. Even with due diligence, in well run stable organizations, such issues sometimes slip by.

Permit Time-Sharing Agreements Prior to Tentative Selectee Designations

We agree that changes are needed, and agree with some but not all of what is being proposed here.

We agree with paragraph 57, to allow and encourage applicants to work together, and even to plan to work together as they apply. As such, we support the modification proposed in paragraph 57.

Paragraph 58 asks about safeguards. Point aggregation can encourage small timeshare groups, so that some safeguards are needed. We propose that there be no limit on the number of organizations that can enter into a time-sharing agreement, and also believe that the rights of those excluded need to be protected.

The first protection could be a requirement preserve the points, as is done in some other cases with a “Holding Period”. Paragraph 60 refers “some applicants .. enter ... without intent to build and operate ...”. In such cases, the points are lost. The current policy encourages this specific type of abuse. In these cases, we favor—first—giving organizations previously excluded from the timeshare a chance to enter, or even open a mini-window, as a way to restore the points.

A similar situation exists when stations in a timeshare notice that an applicant is gone, and apply for increased or full-time operation, as in 2013 window MX group 40.

Another possible safeguard is to consider the pledge points, and explicitly state that if aggregating points, the hours pledge should be for each party, not for the total.[3]

Procedures for Remaining Tentative Selectees Following Dismissal of Accepted Point Aggregation Time Share Agreements

The biggest possible improvement in this topic would be for the commission to dismiss applications that are non-winning as soon as possible.

It is common for those filing time-shares to wait until the deadline to file to prevent opponents from making counter filings. This results in sudden losers that can do nothing about it other than file objections—even when negotiations might yield a preferable settlement.

We suggest that the initial window to file agreements be short, perhaps 30 days, and then any filing that changes the outcome triggers a 30-day extension for others to react, becoming final

[3] With consideration for many-way time sharing when the pledged hours are simply impossible.

when 30 days passes with no filings.

Conclusion

The goal to support localism and diversity on LPFM channels is a primary mandate of LCRA. As such, shaping rules to prioritize this is critical to sustaining diverse local programming in the face of increasing media consolidation. As the FCC is well-aware, truly local fledgling LPFM stations operate at a disadvantage given market norms.

Working together, in open conversation with grassroots LPFM advocates—despite an inherent discrepancy of resources—is critical to successfully supporting the intent of this rulemaking. And, fostering an outlet that creates space for local programming which continues to be encroached upon on NCE and other channels.

We thank the Commission for consideration of this Reply and for its effort to simplify these matters.

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